IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

OP.No. 21025 of 1999(C)

PETITIONER:

N.SUKUMARAN,
PULLARKATTU HOUSE,
KANTHALLOOR P.O.,
IDUKKI DISTRICT.

BY ADV. SRI.S.GOPAKUMARAN NAIR

RESPONDENTS:
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1. THE KANTHALLOOR SERVICE CO-OPERATIVE BANK LTD.,
NO.K.341, KANTHALLOOR, VIA.MUNNAR, IDUKKI DISTRICT.

2. VIJU ABRAHAM, OFFICIATING SECRETARY,
THE KANTHALLOOR SERVICE CO-OPERATIVE BANK LTD.,
NO.K.341, KANTHALLOOR, VIA MUNNAR, IDUKKI DISTRICT.

3. SAJAN K.JACOB, KAVANADIYIL,
KOVILKKADAVU, SAHAYAGIRI P.O.,
VIA MUNNAR,
IDUKKI DISTRICT.

4. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES,
IDUKKI, PAINAVU P.O.

5. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

6. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES,
DEVIKULAM, IDUKKI DISTRICT.

7. SRI.K.V.KURIAN, ADVOCATE, ENQUIRY OFFICER,
ADIMALI.

8. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
KERALA, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER, SMT.ANU SIVARAM FOR R4 TO R6 AND R8
SRI.P.P.JACOB FOR R1 AND 2

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/12/2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.34702/1999 IN O.P.NO.21025/1999

DISMISSED.

SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

01/12/2007

APPENDIX

PETITIONER'S EXTS.:

EXT.P1 TRUE COPY OF THE ORDER NO.L.NO.33/97-98 DATED 24.9.97 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P2 TRUE COPY OF THE NOTICE DT.27.10.97 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P3 TRUE COPY OF THE SHOW CAUSE NOTICE NO.D.P.101/97 ISSUED TO THE PETITIONER BY THE 1ST RESPONDENT DT.27.10.97

EXT.P4 TRUE COPY OF THE LETTER SENT BY THE PETITIONER TO THE 2ND RESPONDENT DT.11.11.97

EXT.P4(a) TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT CARD.

EXT.P5 TRUE COPY OF THE REPLY NO.L.NO.D.P.102/97-98 DT.18TH NOVEMBER 1997 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P6 TRUE COPY OF THE LETTER DATED 30.11.97 FROM THE PETITIONER TO THE SECRETARY-IN-CHARGE.

EXT.P6(a) TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT CARD.

EXT.P7 TRUE COPY OF THE CHARGE SHEET ISSUED BY THE 3RD RESPONDENT DT.13.12.97 TO THE PETITIONER.

EXT.P8 TRUE COPY OF THE LETTER DT.26.12.97 ISSUED TO THE 3RD RESPONDENT BY THE PETITIONER.

EXT.P8(a) TRUE COPY OF THE POSTAL ACKNOWLEDGEMENT CARD.

EXT.P9 TRUE COPY OF THE LETTER SENT BY THE PETITIONER TO THE 2ND RESPONDENT DT.15.1.98.

EXT.P10 TRUE COPY OF THE LETTER FROM THE 2ND RESPONDENT TO THE PETITIONER DT.29.1.98

EXT.P11 TRUE COPY OF THE NOTICE SENT BY THE ENQUIRY OFFICER TO THE PETITIONER DT.12.1.1998

EXT.P12 TRUE COPY OF THE NOTICE DATED 31.1.98 FROM THE ENQUIRY OFFICER TO THE PETITIONER.

EXT.P13 TRUE COPY OF THE SHOW CAUSE NOTICE NO.L.NO.486/98-99 DT.9.4.98

EXT.P14 TRUE COPY OF THE REPORT.

EXT.P15 TRUE COPY OF THE EXPLANATION SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT DT.23.4.98

EXT.P16 TRUE COPY OF THE LETTER ISSUED FROM THE CHAIRPERSON OF THE SUB COMMITTEE TO THE PETITIONER DT.28.4.98

EXT.P17 TRUE COPY OF THE DECISION OF THE SUB COMMITTEE DATED 27.4.98

EXT.P18 TRUE COPY OF THE APPEAL MEMORANDUM SUBMITTED BY THE PETITIONER BEFORE THE MANAGING COMMITTEE OF THE BANK.

EXT.P19 TRUE COPY OF THE REPRESENTATION.

EXT.P20 TRUE COPY OF THE LETTER WRITTEN BY THE 4TH RESPONDENT TO THE PETITIONER DT.18.7.98

EXT.P21 TRUE COPY OF THE LETTER FROM THE PRESIDENT TO THE PETITIONER.

EXT.P22 TRUE COPY OF THE LETTER FROM THE 6TH RESPONDENT TO THE PETITIONER.

EXT.P23 TRUE COPY OF THE PETITION SENT BY THE PETITIONER TO THE 8TH RESPONDENT DT.6.12.98

EXT.P24 TRUE COPY OF THE REMINDER LETTER SENT BY THE PETITIONER DATED 10.04.1999

EXTS. OF R1:

EXT.R1(a) TRUE COPY OF THE JUDGMENT IN CRL.R.P.254/87 DT.2/3/89 OF THIS HON'BLE COURT.

EXT.R1(b) TRUE COPY OF ORDER IN SLP NO.1560/89 DT.28.8.90 OF THE HON'BLE SUPREME COURT OF INDIA.

EXT.R1(c) TRUE PHOTOCOPY OF LETTER ISSUED BY THE PETITIONER TO THE SUB REGISTRAR DEVIKULAM DT.20.9.94

EXT.R1(d) TRUE PHOTOCOPY OF BOARD RESOLUTION NO.11 DT.26.9.97 OF THE 1ST RESPONDENT BANK.

EXT.R1(e) TRUE PHOTO COPY OF RELEVANT PORTION OF THE REPORT OF THE 7TH RESPONDENT DOMESTIC ENQUIRY DT.2.4.98

EXT.R1(f) TRUE PHOTOCOPY OF AUTHORISATION LETTER NO.AEL 1511/99 DT.30.3.99 OF THE 4TH RESPONDENT.

EXT.R1(g) TRUE PHOTOCOPY OF JUDGMENT OF W.A. NO.1662/98 DT.15.9.98 OF THIS HON'BLE COURT.

EXT.R1(h) TRUE PHOTOCOPY OF MEMO FILED BY THE PETITIONER TO ENGAGE AN ADVOCATE BEFORE THE ENQUIRY OFFICE DT.17.1.98

EXT.R1(i) TRUE PHOTOCOPY OF VAKALATH FILED BY ADVOCATE BENNY MATHEW DT.9.2.98

\\TRUE COPY//

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 21025 of 1999-C

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Dated this the 1st day of December, 2007

J U D G M E N T

The petitioner was the Secretary of the first respondent Co-operative Bank. He challenges the disciplinary proceedings initiated against him. The basic contention is that the domestic enquiry was conducted in an arbitrary manner and he was not given appropriate opportunity of being heard.

2. The original petition, the counter affidavit and the reply affidavit disclose certain crucial facts, which I deem it appropriate to refer to, because those matters, in my view, have to guide whether the jurisdiction under Article 226 of the Constitution of India needs to be exercised in the case in hand.

3. Employed with the Society, from sometime in 1970, the petitioner was placed under suspension after he failed to report for duty and certain actions of criminal breach of trust that led to proceedings before the criminal court were unearthed. Though, he was acquitted by the Magistrate's court in the first instance, that

order of acquittal was set aside by this Court. Thereafter, he was convicted and the appellate court and this Court in revision confirmed that conviction. The Apex Court also did not interfere with the conviction, but reduced the sentence to that which he had already suffered by that time. I may, at once, recall that he was the Secretary of a Co-operative Bank, which deals with public funds and the charge against him was criminal breach of trust. Thereafter, it appears that he was reinstated by a later Board of Directors and he is again, alleged to have committed certain acts of falsification of records etc. Though, he had created certain documents, whereby, he had pledged his property to satisfy the misappropriated amounts, he is shown to have apparently squeezed out that liability through a false proceedings before the Sub Registrar, Devikulam. The first respondent had moved this Court for directions regarding certain complaints that it had made. By Ext.R1(g) judgment, the Division Bench observed that the bank may take appropriate action for recovery of the alleged misappropriated amounts, in accordance with law. Thus, parallel to the impugned domestic enquiry or even thereafter, proceedings by way of arbitration under the K.C.S Act has concluded against

the petitioner with recovery orders in favour of the first respondent.

4. The aforesaid facts would categorically show that even if there is any breach of rules of fair hearing, in so far as the domestic enquiry is concerned, that does not require to be interfered with this Court, particularly, when the intra institutional appellate remedies also exhausted against the petitioner. It is also to be noted that the petitioner was represented through the counsel before the enquiry officer and there were a few postings in the enquiry proceedings. The plea of the first respondent that the attempt of the petitioner was only to drag on the disciplinary proceedings is, therefore, not out of place.

For the aforesaid reasons, I do not find any ground to interfere with the impugned action, in exercise of the discretionary authority under Article 226 of the Constitution of India. The original petition fails and the same is dismissed accordingly.

THOTTATHIL B. RADHAKRISHNAN,
Judge

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 21025 of 1999-C

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J U D G M E N T

1st December, 2007